**Robert W. Quinn, Jr.**
Director - Federal Government Affairs

Suite 1000
1120 20th St., NW
Washington, DC 20036
202 457-3851
FAX 202 457-2545

October 10, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W. – Room TWB-204
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Ms. Salas:

Please be advised that a copy of the attached correspondence was delivered to Dorothy Attwood today.

I have submitted two copies of this Notice in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

Robert W. Quinn, Jr.

Attachment

No. of Copies rec'd 0+2
List ABCDE

**Robert W. Quinn, Jr.**
Director - Federal Government Affairs

Suite 1000
1120 20th St., NW
Washington, DC 20036
202 457-3851
FAX 202 457-2545

October 10, 2000

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 5-C450
Washington, DC 20554

Re: Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Ms. Attwood:

I am writing concerning the Commission's method of assessment of universal service contributions and why the Commission should address that issue based on the existing record in this proceeding. This issue was first addressed by the Commission in the May 8, 1997 Universal Service Order, 12 FCC Rcd 8776 (1997), and the Commission failed to remedy this problem in its Memorandum Opinion & Order and Seventeenth Order on Reconsideration, FCC 99-280, 1999 WL 816258 (Oct. 13, 1999) ("Order"), published in 65 Fed. Reg. 4577 (Jan. 31, 2000). In that Order, the Commission reaffirmed its prior-year assessment methodology for universal service fund ("USF") contributions. On March 1, 2000, AT&T filed the enclosed petition for reconsideration of that Order, which remains pending and unresolved. As AT&T's petition demonstrates, the prior-year assessment methodology ("USF lag") systematically disadvantages certain carriers, violates statutory requirements, discourages local competition, and should be promptly revised. It appears now that a question has been raised whether a *further* notice of proposed rulemaking ("FNPRM") needs to be issued and completed before the Commission can take remedial action. Clearly, an FNPRM is *not* required.

First, the Commission's rules addressing petitions for reconsideration in rulemaking proceedings allow the Commission to adopt modified rules on reconsideration. The Commission's rule, 47 C.F.R. § 1.429(i), provides, in relevant part, that "The Commission may grant the petition for reconsideration in whole or in part or may deny the petition. Its order will contain a concise statement of the reasons for the action taken. Any order disposing of a

petition for reconsideration which *modifies* rules adopted by the original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order." (emphasis added).

Second, AT&T's pending reconsideration petition, which was put out for public comment by notice published in the Federal Register (Public Notice No. 2397, 65 Fed. Reg. 17879 (April 5, 2000)), is fully sufficient to comply with the notice and comment requirements of the Administrative Procedures Act, 5 U.S.C. § 553 ("APA"). See Fertilizer Inst. v. EPA, 935 F.2d 1303, 1311 (D.C. Cir. 1991) (quoting United Steelworkers of America v. Marshall, 647 F.2d 1189, 1225 (D.C. Cir. 1980) (quoting BASF Wyandotte Corp. v. Costle, 598 F.2d 637, 642 (1st Cir. 1979)) (additional notice and comment unnecessary when "a new round of notice and comment would not provide commenters with 'their first occasion to offer new and different criticisms which the agency might find convincing'"). As the D. C. Circuit has explained, "Section 553(b) does not require that interested parties be provided with precise notice of each aspect of regulations eventually adopted. Rather, notice is sufficient if it affords interested parties a reasonable opportunity to participate in the rulemaking process." Forester v. Consumer Product Safety Commission, 559 F.2d 774,787 (D.C. Cir 1977) (citations omitted); accord Daniel Intern. Corp. v. Occupational Safety and Health Review Com'n, 656 F.2d 925, 932 (4th Cir. 1981) (citations omitted). That standard is unquestionably satisfied here. AT&T's petition raised only one issue, namely, the inequity of the prior-year assessment mechanism, and numerous parties filed comments, including Bell Atlantic (now Verizon), BellSouth, U S WEST, Telecommunications Resellers Association, Hertz Technologies, Inc., and Operator Communications, Inc. d/b/a Oncor Communications, Inc. Thus, both as a matter of law and fact, there was *ample* notice and opportunity for comment.

Not only is public notice of AT&T's petition for reconsideration *itself* sufficient to provide the required APA notice, but the issue of the appropriate assessment and recovery mechanism has been raised *throughout* the Commission's USF proceedings. For one, in the proceedings leading up to the Universal Service Order, AT&T had urged the Joint Board and the Commission to recover universal service costs through a retail surcharge on end-users' bills, applied to customer-specific retail revenues, and has a petition for reconsideration that remains pending on this issue.[1] Had the Commission adopted this mechanism (which was broadly supported by *all* carriers), USF assessments would have been based on current-year revenues which would ameliorate the effects on a carrier of

---

[1] AT&T's petition for reconsideration of the Universal Service Order, filed July 11, 1997, asked the Commission to adopt a mandatory end-user surcharge as the most competitively neutral USF recovery mechanism.

a reduction in year-to-year revenues, as is bound to occur as the RBOCs enter the long distance market.

Moreover, a number of parties had filed petitions for reconsideration and/or waivers seeking modification of the prior-year assessment mechanism or relief from its effects. To AT&T's knowledge, at least *eight* such petitions had been filed by carriers to use current, rather than historical, revenue data in computing their USF obligations. All of these petitions were put out for public comment. See MobileTel, Inc. Petition for Partial Waiver, Public Notice, DA 98-1098 (June 9, 1998); National Telephone & Communications, Inc. Emergency Petition for Partial Waiver, Public Notice, DA 98-1301 (June 30, 1998); Affinity Corporation Emergency Petition for Partial Waiver, Public Notice, DA 98-1384 (July 13, 1998); Oncor Communications, Inc. Emergency Petition for Partial Waiver, Public Notice, DA 98-1409 (July 16, 1998); Hotel Communications, Inc. Petition for Waiver, Public Notice, DA 98-1647 (Aug. 19, 1998); Network Operator Services, Inc. Petition for Waiver or, in the Alternative, for Reconsideration, Public Notice, DA 98-1871 (Sept. 18, 1998); U. S. Network, Inc. Petition for Partial Waiver and LDC Telecommunications, Inc. Petition for Waiver or Reconsideration, Public Notice, DA 98-2137 (Oct. 26, 1998).

Further, the November 25, 1998 Second Recommended Decision of the Joint Board, 13 FCC Rcd 24,744, ¶ 69 (1998), also squarely raised the USF lag issue because it recommended that a carrier's line-item USF charge be no greater than the USF assessment rate so that no class of customer is disadvantaged by being charged excessively. As AT&T showed in its responsive pleadings, filed December 23, 1998 and January 13, 1999, in suggesting that carriers should have discretion to recover through a line-item charge less but not more than their USF assessment, the Joint Board appears to believe that carriers have the ability to compete away USF subsidies. This is a fallacy because all carriers are required to contribute into the fund on the same basis and that fact will not, and indeed cannot, change by a carrier increasing its efficiency in a competitive market. Most fundamentally, while AT&T urged a current-year assessment mechanism, it also showed that for a carrier with declining market share, the prior-year assessment mechanism *requires* the carrier's USF charge to end users to be *higher* than the USF assessment rate because the carrier must recover its USF obligation assessed against higher prior-year revenues from a smaller current customer revenue base.

In short, not only is the public notice of AT&T's March 1, 2000 petition for reconsideration sufficient to comply with Commission rules and APA notice and comment requirements, but one can hardly imagine an issue that has been more extensively debated on the public record than the USF lag issue. For these reasons, and in light of the serious competitive inequity of the prior-year assessment mechanism, AT&T strongly urges the Commission to move forward with decisive action that would put USF assessments on a current-year basis, without initiating yet another proceeding on this issue that already has been fully addressed.

Very truly yours,

Robert W. Quinn, Jr.

Enclosure

cc: Anna Gomez, Legal Adviser, Chairman Kennard
Rebecca Beynon, Legal Adviser, Commissioner Furchgott-Roth
Kyle Dixon, Legal Adviser, Commissioner Powell
Jordan Goldstein, Legal Adviser, Commissioner Ness
Deena Shetler, Legal Adviser, Commissioner Tristani
Carol Mattey, Deputy Chief, Common Carrier Bureau